

### **REMARKS**

The Office Action has been reviewed carefully and claims 1, 4, 7 and 8 have been amended in a sincere effort to place the application in condition for allowance. Claim 1 has been amended to clarify that the composition is a foliage colorant composition. In addition claims 2-3 have been canceled and new claims 15-19 have been added. Claims 1, 4-10 and 15-19 therefore are pending in this application. Support for the language contained in new claim 15 can be found in original claims 1 and 3. Support for the language contained in new claims 16-19 can be found at page 4, lines 21-24 of the specification. No new matter has been added. In view of the foregoing amendments and following remarks, Applicants believe that all the rejections are in condition for withdrawal and that all pending claims 1, 4-10 and 15-19 are in condition for allowance.

### **Applicant's Invention**

The present invention is directed to a colorant composition suitable for coloring foliage, and in particular, turf grass. The composition comprises humic acid, fulvic acid or a mixture thereof and a water soluble dye, which when added to a foliage colorant has the surprising and unexpected effect of causing the color of the composition to be intensified and/or modified. The composition may be diluted with water to an aqueous form so that it may be sprayed onto the foliage. Claim 1 has been amended to recite the above-described features of the present invention.

### **Claims 1 and 2 - 35 U.S.C. § 102**

Claims 1 and 2 are rejected under 35 USC 102(b) as being anticipated by Kosaka (JP 357008272). The Examiner states that Kosaka teaches inks for ball-point pens comprising humic acid, water and a water soluble-dye. Claim 1 has been amended to clarify that the composition is a foliage colorant composition and upon dilution with water is suitable for spraying into foliage. Applicant submits that this recited purpose or intended use results in a material difference between claim 1 and an ink for a ball-point pen as described in Kosaka. The ink of a ball point pen is formulated to be quick drying and have a certain viscosity which prevents leakage from the pen. The latter may be achieved by adding a viscosity modifying agent such as a polyhydric alcohol, as described in Kosaka. It may be appreciated that such a composition would be wholly unsuitable for applying to foliage. In particular, it would be appreciated by horticulturalists that a composition containing a viscosity modifying agent such as a polyhydric alcohol would most likely be detrimental to a plant's health. Claim 2 has been cancelled.

### **Claims 1, 2 and 8 - 35 U.S.C. § 102**

Claims 1, 2 and 8 have been rejected under 35 U. S. C. 102(b) as being anticipated by Hamamoto (JP361106683). Hamamoto describes an ink for a ball point pen. For the reasons provided above with respect to Kosaka, the applicant submits that claim 1 is not anticipated by Hamamoto. Claim 2 has been cancelled and claim 8 is now dependent upon claim 15. Claim 15 includes the feature of original claim 3. Thus, neither claim 15 nor claim 8 as amended are anticipated by Hamamoto.

### **Claim 1 - 35 U.S.C. § 102**

Claim 1 has also been rejected under 35 U. S. C. 102(b) as being anticipated by Dainichiseika Color & Chemical Manufacturing (JP 05065425). The Examiner states that Dainichiseika Color & Chemical Manufacturing teaches a red azo colorant composition comprising humic acid, water and a water soluble azo dye. For the reasons provided above with respect to Kosaka, the Applicant submits that claim 1 is not anticipated by Dainichiseika Color & Chemical Manufacturing. Claim 2 has been cancelled and claim 8 is now dependent upon claim 15. Claim 15 includes the feature of original claim 3. Thus, neither claim 15 nor claim 8 as amended are anticipated by Dainichiseika Color & Chemical Manufacturing.

### **Claims 1-10 - 35 U.S.C. § 103**

Claims 1-10 have been rejected under 35 U. S. C. 103(a) as being unpatentable over Reidel et al. (US 2002/01822340). Reidel describes a self-foaming or foam like preparation for cosmetic or dermatological preparations. The claims have been amended to clarify that the claimed compositions are directed towards a foliage colorant composition. Thus Reidel relates to a non-analogous art and therefore cannot be relied upon to support a rejection under 35 USC 103. In any case, applicant submits that there is no motivation in Reidel to formulate the claimed composition. Reidel describes an extremely large number of possible components with no motivation whatsoever to combine humic acid and a water soluble dye to provide a composition suitable for coloring foliage.

### **Claims 1-10 - 35 U.S.C. § 103**

Claims 1-10 have also been rejected under 35 U. S. C. 103(a) as being unpatentable over Heidenfelder et al (US 2003/0118621). Heidenfelder describes a cosmetic stick comprising a fatty phase and an hydroxybenzophenone compound. Thus, this citation also relates to a non-analogous art and cannot properly be cited to support a rejection under 35 U. S. C. 103. Further, there is no motivation to be found in this document to combine the components as presently claimed.

### **Claims 3-10 - 35 U.S.C. § 103**

Claims 3-10 have been rejected under 35 U. S. C. 103(a) have been rejected as being unpatentable over Kosaka in view of Osada (US, 5,993,098). First, the claims are not anticipated by Kosaka for the reasons given above. Thus the combination of Kosaka and Osada cannot teach or suggest all of the claimed limitations. Further, Kosaka and Osada are in the non-analogous art of ball point pen inks and therefore cannot be relied upon to support a rejection under 35 US. C. 103. The Examiner also refers to ammonia at column 4 line 31 of Osada. However, the applicant points out that ammonia is referred to therein as being a counter ion to a water soluble polymer such as an acrylic acid resin. Applicant submits that an ammonium salt of a water soluble polymer is not a fertilizer and thus cannot meet the limitation of claim 9.

### **Claims 3-10 - 35 U.S.C. § 103**

Claims 3-10 have further been rejected under 35 U. S. C. 103(a) as being unpatentable over Kosaka in view of Inoue et al (US 4,545,818). Such a combination is again in the non-analogous art of ball point pens and cannot properly be cited to support a rejection under 35 U. S. C. 103.

### **Claims 3-7, 9 and 10 - 35 U.S.C. § 103**

Claims 3-7, 9 and 10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Hamamoto in view of Osada. Such a combination is again in the non-analogous art of ball point pens and cannot properly be cited to support a rejection under 35 U. S. C. 103.

### **Claims 3-7, 9 and 10 - 35 U.S.C. § 103**

Claims 3-7, 9 and 10 have been rejected under 35 U. S. c. 103(a) as being unpatentable over Hamamoto in view of Inoue. Such a combination is again in the non-analogous art of ball point pens and cannot properly be cited to support a rejection under 35 U. S. C. 103.

### **Claims 1-5 and 7-10 - 35 U.S.C. § 103**

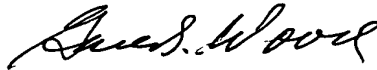
Claims 1-5 and 7-10 have been rejected under 35 U. S. C. 103(a) as being unpatentable over Ayaki et al. (US 5,744, 278). Ayaki relates to toner particles for developing an electrostatic latent image and thus relates to a non-analogous art. In any case, Ayaki does not disclose each of the limitations of the present claims. Ayaki describes toner particles having a capsule structure produced by a polymerization process. Ammonia and water as recited in column 13 are examples of suitable anionic polymerization initiators and are not components of the toner.

### CONCLUSION

Applicant respectfully submits that not only do none of the citations, whether alone or in combination teach or suggest a composition as presently claimed, but also fail to teach or suggest any modification of the compositions or particles described therein to enable those compositions be suitable for application to foliage.

In view of the foregoing amendments and remarks, it is respectfully submitted that all pending claims 1, 4-10 and 15-19 are patentable over the cited prior art. Accordingly, reconsideration and withdrawal of the rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gwen R. Acker Wood".

Gwen R. Acker Wood, Ph.D., J.D.  
Attorney for Applicant  
Registration Number 51,027

Telephone: 412-566-6085

E-Mail: [gwood@eckertseamans.com](mailto:gwood@eckertseamans.com)